

## TRANSFER OF JURISDICTION OVER RENEGOTIATION CASES FROM TAX COURT TO COURT OF CLAIMS

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DECEMBER 18, 1970.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. MILLS, from the Committee on Ways and Means, submitted the  
following

### REPORT

[To accompany H.R. 19909]

The Committee on Ways and Means to whom was referred the bill (H.R. 19909) to amend the Renegotiation Act of 1951 to provide that the Court of Claims shall have jurisdiction of renegotiation cases, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 3, line 2, insert "the" before "Tax Court" the second place it appears in such line.

Page 4, line 9, strike out "which" and insert "which at any time was pending in the United States Tax Court and which".

### I. SUMMARY

H.R. 19909 amends the Renegotiation Act of 1951, to provide the U.S. Court of Claims with exclusive jurisdiction over redeterminations of excessive profits determined by the Renegotiation Board. The U.S. Tax Court up to this time has had jurisdiction of these cases.

This amendment is generally applicable where the time for filing petitions for redeterminations of excessive profits expires on or after the date of enactment of this bill. However, provision is made to transfer over to the Court of Claims all renegotiation cases pending at that time before the Tax Court unless the chief judge of the Tax Court determines that, because of the progress on the case up to that time, it can be handled more expeditiously by the Tax Court.

This bill has been agreed to unanimously by your committee.

## II. REASONS FOR BILL

Under present law, in those cases where a contractor on a Government contract (or on related subcontracts) does not agree with a determination of excessive profits made by the Renegotiation Board, he may petition the U.S. Tax Court for a redetermination. In such a proceeding, the Tax Court may determine an amount of excessive profits which is less than, equal to, or greater than the amount determined by the Board.

Your committee has concluded that for several reasons it is desirable to transfer the jurisdiction over redeterminations of excessive profits to the U.S. Court of Claims. First, the subject matter of renegotiation cases is similar to matters presently being handled in the Court of Claims—for example, actions brought by contractors for refunds in cases involving contracts with the Government. Second, the procedures normally followed in the Court of Claims are believed to be better suited to the process of renegotiation than those which generally prevail in a Tax Court proceeding. It is not unusual, for example, for the Court of Claims to handle cases extending over a long period of time, and for that court (or a Court of Claims Commissioner) to conduct lengthy hearing involving a large volume of evidence. Both of these elements customarily exist in a renegotiation case. On the other hand, a Tax Court judge often has a calendar of cases (predominantly tax cases) which must be disposed of as expeditiously as possible, and the technique needed for this type of work is not closely related to the procedures required in renegotiation cases.

Third, the workload of the Tax Court recently has been much heavier than that of the Court of Claims with the result that a shifting of renegotiation cases to the latter should make a substantial contribution to the evening out of the workload of the two Courts. Finally, it is the committee's understanding that both the Court of Claims and the Tax Court believe that this transfer of jurisdiction in renegotiation cases is appropriate.

## III. GENERAL EXPLANATION OF BILL

The bill provides that petitions for redeterminations of excessive profits determined by the Renegotiation Board are to be filed with the U.S. Court of Claims, and that the Court of Claims is to have exclusive jurisdiction to determine the amount of excessive profits received or accrued by a contractor or subcontractor in these cases. The Court of Claims may determine that the amount of excessive profits is less than, equal to, or greater than the amount determined by the Board.

As in the case of the present proceeding before the Tax Court, the proceeding in the Court of Claims is not to be treated as a proceeding to review the determination of the Renegotiation Board, but is to be a *de novo* proceeding. In other words, in excessive profits redetermination cases there is to be a full *de novo* court trial in the Court of Claims. The decision of the Court of Claims is to be subject to review only by the Supreme Court upon certiorari in the manner provided in the United States Code for the review of other cases in the Court of Claims.

The bill provides that the change in jurisdiction with respect to renegotiation cases is to apply with respect to any case in which the

time for filing a petition for a redetermination of an order of the Renegotiation Board expires on or after the date of enactment of this bill. Any petition for a redetermination which is filed with the Tax Court on or after the date of enactment of the bill and 90 days thereafter is to be considered as if filed with the Court of Claims and is to be transferred from the Tax Court to the Court of Claims within 30 days after the petition is filed. In addition, all cases arising under the Renegotiation Act which are pending in the Tax Court on the date of enactment of this bill are to be transferred within 30 days from the Tax Court to the Court of Claims except where the chief judge of the Tax Court determines otherwise. If he finds that the proceedings have progressed to the point where the case can be more expeditiously decided by the Tax Court than the Court of Claims, he can direct that the case be retained by the Tax Court. Any case remaining with the Tax Court because of the application of this rule after the effective date of this bill or any case on appeal from a judgment of the Tax Court on the effective date of this bill is to be governed by the same rules and provisions of the Renegotiation Act as are applied under present law.

#### IV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

##### RENEGOTIATION ACT OF 1951

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##### SEC. 103. DEFINITIONS.

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(f) PROFITS DERIVED FROM CONTRACTS WITH THE DEPARTMENTS AND SUBCONTRACTS.—The term "profits derived from contracts with the Departments and subcontracts" means the excess of the amount received or accrued under such contracts and subcontracts over the costs paid or incurred with respect thereto and determined to be allocable thereto. All items estimated to be allowed as deductions and exclusions under chapter 1 of the Internal Revenue Code (excluding taxes measured by income) shall, to the extent allocable to such contracts and subcontracts, be allowed as items of cost, except that no amount shall be allowed as an item of cost by reason of the application of a carry-over or carry-back. Notwithstanding any other provision of this section, there shall be allowed as an item of cost in any fiscal year ending before December 31, 1956, subject to regulations of the Board, an amount equal to the excess, if any, of costs (computed without the application of this sentence) paid or incurred in the preceding fiscal year with respect to receipts or accruals subject to the provisions of this title over the amount of receipts or accruals subject to the provisions of this title which were received or accrued in such preceding fiscal year, but only to the extent that such excess did not result from gross inefficiency of the contractor or subcontractor.

For the purposes of the preceding sentence, the term "preceding fiscal year" does not include any fiscal year ending prior to January 1, 1951. Costs shall be determined in accordance with the method of accounting regularly employed by the contractor or subcontractor in keeping his records, but, if no such method of accounting has been employed, or if the method so employed does not, in the opinion of the Board, or, upon redetermination, in the opinion of [The Tax Court of the United States] *the Court of Claims*, properly reflect such costs, such costs shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of [The Tax Court of the United States] *the Court of Claims*, does properly reflect such costs. In determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income, other than Federal taxes, which are attributable to the portion of the profits which are not excessive.

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(i) RECEIVED OR ACCRUED AND PAID OR INCURRED.—The terms "received or accrued" and "paid or incurred" shall be construed according to the method of accounting employed by the contractor or subcontractor in keeping his records, but if no such method of accounting has been employed, or if the method so employed does not, in the opinion of the Board, or, upon redetermination, in the opinion of [The Tax Court of the United States] *the Court of Claims* properly reflect his receipts or accruals or payments or obligations, such receipts or accruals or such payments or obligations shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of [The Tax Court of the United States] *the Court of Claims*, does properly reflect such receipts or accruals or such payments or obligations.

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#### SEC. 105. RENEGOTIATION PROCEEDINGS.

(a) PROCEEDINGS BEFORE THE BOARD.—Renegotiation proceedings shall be commenced by the mailing of notice, to that effect, in such form as may be prescribed by regulation, by registered mail or by certified mail to the contractor or subcontractor. The Board shall endeavor to make an agreement with the contractor or subcontractor with respect to the elimination of excessive profits received or accrued, and with respect to such other matters relating thereto as the Board deems advisable. Any such agreement, if made, may, with the consent of the contractor or subcontractor, also include provisions with respect to the elimination of excessive profits likely to be received or accrued. If the Board does not make an agreement with respect to the elimination of excessive profits received or accrued, it shall issue and enter an order determining the amount, if any, of such excessive profits, and forthwith give notice thereof by registered mail or by certified mail to the contractor or subcontractor. In the absence of the filing of a petition with [The Tax Court] *the Court of Claims* of the United States under the provisions of and within the time limit prescribed in section 108, such order shall be final and conclusive and shall not be subject to review or redetermination by any court or other agency. The Board shall exercise its powers with respect to the aggregate of the amounts received or accrued during the fiscal year (or such other period as may be fixed by mutual agreement) by a contractor or subcontractor under



contracts with the Departments and subcontracts, and not separately with respect to amounts received or accrued under separate contracts with the Departments or subcontracts, except that the Board may exercise such powers separately with respect to amounts received or accrued by the contractor or subcontractor under any one or more separate contracts with the Departments or subcontracts at the request of the contractor or subcontractor. By agreement with any contractor or subcontractor, and pursuant to regulations promulgated by it, the Board may in its discretion conduct renegotiation on a consolidated basis in order properly to reflect excessive profits of two or more related contractors or subcontractors. Renegotiation shall be conducted on a consolidated basis with a parent and its subsidiary corporations which constitute an affiliated group under section 141(d) of the Internal Revenue Code if all of the corporations included in such affiliated group request renegotiation on such basis and consent to such regulations as the Board shall prescribe with respect to (1) the determination and elimination of excessive profits of such affiliated group, and (2) the determination of the amount of the excessive profits of such affiliated group allocable, for the purposes of section 3806 of the Internal Revenue Code, to each corporation included in such affiliated group. Whenever the Board makes a determination with respect to the amount of excessive profits, and such determination is made by order, it shall, at the request of the contractor or subcontractor, as the case may be, prepare and furnish such contractor or subcontractor with a statement of such determination, of the facts used as a basis therefor, and of its reasons for such determination. Such statement shall not be used in [The Tax Court of the United States] *the Court of Claims* as proof of the facts or conclusions stated therein.

(b) METHODS OF ELIMINATING EXCESSIVE PROFITS.—

(1) IN GENERAL.—Upon the making of an agreement, or the entry of an order, under subsection (a) of this section by the Board, or the entry of an order under section 108 by [The Tax Court of the United States] *the Court of Claims*, determining excessive profits, the Board shall forthwith authorize and direct the Secretaries or any of them to eliminate such excessive profits—

(A) by reductions in the amounts otherwise payable to the contractor under contracts with the Departments, or by other revision of their terms;

(B) by withholding from amounts otherwise due to the contractor of any amount of such excessive profits;

(C) by directing any person having a contract with any agency of the Government, or any subcontract of thereunder, to withhold for the account of the United States from any amounts otherwise due from such person or such subcontractor to a contractor, or subcontractor of, having excessive profits to be eliminated, and every such person or subcontractor receiving such direction shall withhold and pay over to the United States the amounts so required to be withheld;

(D) by recovery from the contractor or subcontractor of, or from any person or subcontractor directed under subparagraph (C) to withhold for the account of the United States, through payment, repayment, credit, or suit any amount of such excessive profits realized by the contractor or subcontractor.

tractor or directed under subparagraph (C) to be withheld for the account of the United States; or

(E) by any combination of these methods, as is deemed desirable.

(2) INTEREST.—Interest at the rate of 4 per centum per annum shall accrue and be paid on the amount of such excessive profits from the thirtieth day after the date of the order of the Board or from the date fixed for repayment by the agreement with the contractor or subcontractor to the date of repayment, and on amounts required to be withheld by any person or subcontractor for the account of the United States pursuant to paragraph (1) (C), from the date payment is demanded by the Secretaries or any of them to the date of payment. When [The Tax Court of the United States] *the Court of Claims*, under section 108, redetermines the amount of excessive profits received or accrued by a contractor or subcontractor, interest at the rate of 4 per centum per annum shall accrue and be paid by such contractor or subcontractor as follows:

(A) When the amount of excessive profits determined by [the Tax Court] *the Court of Claims* is greater than the amount determined by the Board, interest shall accrue and be paid on the amount determined by the Board from the thirtieth day after the date of the order of the Board to the date of repayment and, in addition thereto, interest shall accrue and be paid on the additional amount determined by [the Tax Court] *the Court of Claims* from the date of its order determining such excessive profits to the date of repayment.

(B) When the amount of excessive profits determined by [the Tax Court] *the Court of Claims* is equal to the amount determined by the Board, interest shall accrue and be paid on such amount from the thirtieth day after the date of the order of the Board to the date of repayment.

(C) When the amount of excessive profits determined by [the Tax Court] *the Court of Claims* is less than the amount determined by the Board, interest shall accrue and be paid on such lesser amount from the thirtieth day after the date of the order of the Board to the date of repayment, except that no interest shall accrue or be payable on such lesser amount if such lesser amount is not in excess of an amount which the contractor or subcontractor tendered in payment prior to the issuance of the order of the Board.

(3) SUITS FOR RECOVERY.—Actions on behalf of the United States may be brought in the appropriate courts of the United States to recover, (A) from the contractor or subcontractor, any amount of such excessive profits and accrued interest not withheld or eliminated by some other method under this subsection, and (B) from any person or subcontractor who has been directed under paragraph (1)(C) of this subsection to withhold for the account of the United States, the amounts required to be withheld under such paragraph, together with accrued interest thereon.

(4) SURETIES.—The surety under a contract or subcontract shall not be liable for the repayment of any excessive profits thereon.

(5) ASSIGNEES.—Nothing herein contained shall be construed (A) to authorize any Department or agency of the Government, except to the extent provided in the Assignment of Claims Act of 1940, as now or hereafter amended, to withhold from any assignee referred to in said Act, any moneys due or to become due, or to recover any moneys paid, to such assignee under any contract with any Department or agency where such moneys have been assigned pursuant to such Act, or (B) to authorize any Department or agency of the Government to direct the withholding pursuant to this Act, or to recover pursuant to this Act, from any bank, trust company or other financing institution (including any Federal lending agency) which is an assignee under any subcontract, any moneys due or to become due or paid to any such assignee under such subcontract.

(6) INDEMNIFICATION.—Each person is hereby indemnified by the United States against all claims on account of amounts withheld by such person pursuant to this subsection from a contractor or subcontractor and paid over to the United States.

(7) TREATMENT OF RECOVERIES.—All money recovered by way of repayment or suit under this subsection shall be covered into the Treasury as miscellaneous receipts. Upon the withholding of any amount of excessive profits or the crediting of any amount of excessive profits against amounts otherwise due a contractor from appropriations from the Treasury, the Secretary shall certify the amount thereof to the Treasury and the appropriations of his Department shall be reduced by an amount equal to the amount so withheld or credited. The amount of such reductions shall be transferred to the surplus fund of the Treasury.

(8) CREDIT FOR TAXES PAID.—In eliminating excessive profits, the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code.

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#### SEC. 106. EXEMPTIONS.

(a) MANDATORY EXEMPTIONS.—The provisions of this title shall not apply to—

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(6) any contract which the Board determines does not have a direct and immediate connection with the national defense. The Board shall prescribe regulations designating those classes and types of contracts which shall be exempt under this paragraph; and the Board shall, in accordance with regulations prescribed by it, exempt any individual contract not falling within any such class or type if it determines that such contract does not have a direct and immediate connection with the national defense. In designating those classes and types of contracts which shall be exempt and in exempting any individual contract under this paragraph, the Board shall consider as not having a direct or immediate connection with national defense any contract for the furnishing of materials or services to be used by the United States, a Department or agency thereof, in the manufacture and sale of synthetic rubbers to a private person or to private persons which

are to be used for nondefense purposes. If the use by such private person or persons shall be partly for defense and partly for non-defense purposes, the Board shall consider as not having a direct or immediate connection with national defense that portion of the contract which is determined not to have been used for national defense purposes. The method used in making such determination shall be subject to approval by the Board. Notwithstanding section 108 of this title, regulations prescribed by the Board under this paragraph, and any determination of the Board that a contract is or is not exempt under this paragraph, shall not be reviewed or redetermined by [the Tax Court] *the Court of Claims* or by any other court or agency; or

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#### SEC. 108. REVIEW BY THE TAX COURT.

Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may—

(a) if the case was conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 105(a) of the notice of such order, or

(b) if the case was not conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 107(e) of the notice of the decision of the Board not to review the case or the notice of the order of the Board determining the amount of excessive profits,

file a petition with [The tax Court of the United States] *the Court of Claims* for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to [finally] determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency except as provided in Section 108A. The court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board. A proceeding before the [Tax Court] *Court of Claims* to finally determine the amount, if any, of excessive profits shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding de novo. [For the purposes of this section the court shall have the same powers and duties, insofar as applicable in respect of the contractor, the subcontractor, the Board, and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, review by the Tax Court of decisions of divisions, stenographic reporting, and reports of proceedings, as such court has under sections 1110, 1111, 1113, 1114, 1115(a), 1116, 1117(a), 1118, 1120, and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency.] In the case of any witness for the Board, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board available for that purpose, and in the case of any other witnesses shall be paid, subject to rules prescribed by the court, by the party at whose instance the witness appears or the deposition is taken. The



filing of a petition under this section shall operate to stay the execution of the order of the Board under subsection (b) of section 105 only if within ten days after the filing of the petition the petitioner files with the [Tax Court] *Court of Claims* a good and sufficient bond, approved by such court, in such amount as may be fixed by the court. Any amount collected by the United States under an order of the Board in excess of the amount found to be due under a determination of excessive profits by the [Tax Court] *Court of Claims* shall be refunded to the contractor or subcontractor with interest thereon at the rate of 4 per centum per annum from the date of collection by the United States to the date of refund.

**[SEC. 108A. REVIEW OF TAX COURT DECISIONS IN RENEGOTIATION CASES.]**

**[(a) JURISDICTION.]**—Except as provided in section 1254 of title 28 of the United States Code, the United States Courts of Appeals shall have exclusive jurisdiction to review decisions by the Tax Court of the United States under section 108 of this Act in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury, except as otherwise provided in this section. In no case shall the question of the existence of excessive profits, or the extent thereof, be reviewed, and findings of fact by the Tax Court shall be conclusive unless such findings are arbitrary or capricious. The judgment of any such court shall be final except that it shall be subject to review, under the limitations herein provided for, by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of title 28 of the United States Code.

**[(b) POWERS.]**—Upon such review, such courts shall have only the power to affirm the decision of the Tax Court or to reverse such decision on questions of law and remand the case for such further action as justice may require, except that such court shall not reverse and remand the case for error of law which is immaterial to the decision of the Tax Court.

**[(c) VENUE OF APPEALS FROM TAX COURT DECISIONS IN RENEGOTIATION CASES.]**—A decision of the Tax Court of the United States under section 108 of this Act may, to the extent subject to review, be reviewed by—

**[(1)]** the United States Court of Appeals for the circuit in which is located the office to which the contractor or subcontractor made his Federal income tax return for the taxable year which corresponds to the fiscal year with respect to which such decision of the Tax Court was made, or if no such return was made for such taxable year, then by the United States Court of Appeals for the District of Columbia, or

**[(2)]** any United States Court of Appeals designated by the Attorney General and the contractor or subcontractor by stipulation in writing.]

**SEC. 108A. REVIEW OF COURT OF CLAIMS DECISIONS.**

*The decisions of the Court of Claims under section 108 shall be subject to review by the Supreme Court upon certiorari in the manner provided in section 1255 of title 28 of the United States Code for the review of other cases in the Court of Claims.*

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#### SEC. 114. REPORTS TO CONGRESS.

The Board shall on or before January 1, 1957, and on or before January 1 of each year thereafter, submit to the Congress a complete report of its activities for the preceding year ending on June 30. Such report shall include—

(1) the number of persons in the employment of the Board during such year, and the places of their employment;

(2) the administrative expenses incurred by the Board during such year;

(3) statistical data relating to filings during such year by contractors and subcontractors, and to the conduct and disposition during such year of proceedings with respect to such filings and filings made during previous years;

(4) an explanation of the principal changes made by the Board during such year in its regulations and operating procedures;

(5) the number of renegotiation cases disposed of by the [Tax Court] *Court of Claims, the United States Tax Court*, each United States Court of Appeals, and the Supreme Court during such year, and the number of cases ending in each such court at the close of such year; and

(6) such other information as the Board deems appropriate.<sup>29</sup>

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